JOHN F. DAVIS, CLERK

No. 712

In the Supreme Court of the United States

OCTOBER TERM, 1964

UNITED STATES OF AMERICA

v.

BOSSIER PARISH SCHOOL BOARD, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-captioned case on August 25, 1964.

OPINIONS BELOW

The opinion of the district court is reported at 220 F. Supp. 243 (W.D. La.). The opinion of the court of appeals (Appendix A, *infra*, p. 7) is not reported.

JURISDICTION

The judgment of the court of appeals (Appendix B, *infra*, p. 8) was entered on August 25, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

755-586—64

QUESTIONS PRESENTED

1. Whether assurances given by a local school district accepting federal financial assistance that it would treat the children of Service personnel "on the same terms, in accordance with the laws of the State" as they treated local children now bar racial segregation of the "federal" children.

2. If so, whether the United States may require specific performance of the assurances by judicial proceedings.

3. Whether, independently of the assurances, the United States has standing to assert, in a suit brought in its name, the constitutional rights of its Service personnel.

STATUTES INVOLVED

20 U.S.C. 636(b) provides in pertinent part:

> (1) Each application by a local educational agency shall set forth the project for the construction of school facilities for such agency with respect to which it is filed, and shall contain or be supported by—
>
> * * * * *
>
> (F) assurance that the school facilities of such agency will be available to the children for whose education contributions are provided in this chapter on the same terms, in accordance with the laws of the State in which the school district of such agency is situated, as they are available to other children in such school district.
>
> * * * * *

20 U.S.C. 641 provides:

> (a) Whenever the Commissioner of Education, after reasonable notice and opportunity for hearing to a local educational agency, finds * * * (3) that any assurance given in an application is not being or cannot be carried out, the Commissioner may forthwith notify such agency that no further payment will be made under this chapter with respect to such agency until there is no longer any failure to comply or the diversion or default has been corrected or, if compliance or correction is impossible, until such agency repays or arranges for the repayment of Federal moneys which have been diverted or improperly expended.

STATEMENT

On January 18, 1963, the United States brought suit in the United States District Court for the Western District of Louisiana to enjoin the Bossier Parish School Board, each of its members, and Emmitt Cope, Superintendent of Education of the Bossier Parish Schools, from discriminating against children of Negro military and civilian personnel stationed or employed at Barksdale Air Force Base and Bossier Base, United States military installations located within Bossier Parish, Louisiana (R. 3–19).

The complaint alleged that respondents maintained separate schools for Negro and white pupils (R. 13), and that it was their "policy and practice" to assign Negro children to "Negro" schools and white children to "white" schools (*ibid.*). It was further alleged that the respondent Board had received, since 1950, a

sum of $3,173,347.43 for the construction and improvement of its schools under the School Construction Act (20 U.S.C. 631 *et seq.*) (R. 7).

In connection with each of its applications for a grant of federal school construction funds, the Board gave written assurances, as required by 20 U.S.C. 636(b)(1)(F), that the school facilities in question would—

> * * * be available to the children for whose education contributions are provided * * * on the same terms, in accordance with the laws of the state in which applicant is situated, as they are available to other children in applicant's school district [R. 12].

The Board, it was alleged, "has failed and is now failing and refusing to perform each of its assurances," because it has not made the public school facilities available to Negro dependents of members and employees of the Armed Forces of the United States upon the same terms as such facilities are made available to white children (R. 14).[1]

The government sought an order enjoining respondents from "segregating or discriminating against, among or between, upon the basis of their race or color, any dependents of military personnel or civilian employees of [petitioner] in the operation of the public schools of Bossier Parish * * *" (R. 15).

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[1] This conduct, it was further alleged, is unconstitutional under the Fourteenth Amendment and impairs the "service and morale" of military personnel and civilian employees of the United States (R. 14).

On February 5, 1963, respondents filed a motion to dismiss, which was granted on August 20, 1963 (R. 21–22, 111–122). The district court concluded that the legislative history of bills introduced for the purpose of withholding funds from school agencies segregated upon the basis of race showed that Congress intended "to provide funds to schools being operated on a segregated basis * * *" (R. 118). Moreover, in the view of the district court, "* * * Congress legally can continue to pay the federal government's share of the cost of educating federal children in those areas where the transition required by [*Brown* v. *Board of Education,* 349 U.S. 294] is not yet complete" (R. 119).

The court of appeals affirmed the judgment on the authority of its decision in *United States* v. *Madison County Board of Education,* 326 F. 2d 237 (C.A. 5). In that case, the court held (1) that the statutory provisions authorizing the Commissioner of Education to withhold payment of future funds for breach of an assurance announced the exclusive remedy, and (2) that the United States lacked standing, independent of the contract, to assert the constitutional rights of Service personnel. See Appendix A, pp. 30, 33, of United States' Petition for a Writ of Certiorari in *United States* v. *Madison County Board of Education, et al.,* No. 473, this Term.[2]

[2] No desegregation of schools has yet taken place within Bossier Parish.

REASONS FOR GRANTING THE WRIT

This case raises issues identical to those presented in *United States* v. *Madison County Board of Education, et al.*, 326 F. 2d 237 (C.A. 5), and was decided solely on the authority of that case. The United States has filed a petition seeking review of the judgment in the *Madison County* case, No. 473, this Term. Since there are no factual distinctions which would set these cases apart, the reasons for granting the writ set forth in the *Madison County* petition apply equally here.

CONCLUSION

We respectfully submit that this petition for a writ of certiorari should be granted and the case set down for argument with No. 473.

ARCHIBALD COX,
Solicitor General.

NOVEMBER 1964.

APPENDIX A

In the United States Court of Appeals for the Fifth Circuit

No. 20903

UNITED STATES OF AMERICA, APPELLANT

versus

BOSSIER PARISH SCHOOL BOARD, ET AL., APPELLEES

Appeal from the United States District Court for the Western District of Louisiana

(August 25, 1964)

Before BROWN, MOORE* and GEWIN, Circuit Judges.

PER CURIAM: This case presents the identical issue disposed of in *United States* v. *Madison County Bd. of Education,* 5 Cir., 1964, 326 F. 2d 237 [No. 20668, January 7, 1964, rehearing denied, April 10, 1964], and on that authority the case must be affirmed.

AFFIRMED.

*Of the Second Circuit, sitting by designation.

APPENDIX B

In the United States Court of Appeals for the Fifth Circuit

October Term, 1963

No. 20903

D.C. Docket No. 9282—Civil

UNITED STATES OF AMERICA, APPELLANT

versus

BOSSIER PARISH SCHOOL BOARD, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

Before BROWN, MOORE* and GEWIN, Circuit Judges.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

AUGUST 25, 1964.

Issued as Mandate: September 16, 1964.

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*Of the Second Circuit, sitting by designation.

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